In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1092

RONALD LEE CASSITY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Following a jury trial in the United States District Court for the Western District of Kentucky petitioner was convicted of having knowingly made a false statement to a firearms dealer in connection with the purchase of a firearm in violation of 18 U.S.C. 922 (a)(6). He was sentenced to a term of four years' imprisonment. The court of appeals affirmed (Pet. App.).

The petitioner contends that the government was required to show that the firearm he purchased had moved in interstate commerce. There is nothing in Section 922(a)(6) imposing such a requirement. As the court below noted, the courts of appeals that have passed on this question consider it sufficient that any transactions with a licensed firearms dealer affects interstate commerce, irrespective of whether the particular firearm has moved in interstate commerce (Pet. App. 10).

Petitioner contends that the "best evidence rule" was violated by use of the oral testimony of a special investigator with the Treasury Department, instead of the dealer's license itself, in proving that the transaction involved a licensed dealer. That contention was properly rejected below. The duties of the special investigator included checking firearms licenses and so his oral statement that he had examined the dealer's firearms license and found it current and proper was admissible.

Petitioner's third issue—that the special investigator should not have been permitted to testify about the gun purchase because his information was received from petitioner while he was in custody on a charge that was later dismissed because it was based on an illegal search—is also without merit. The government's evidence showed that, after a full *Miranda* warning and approximately one month after the initial arrest and after lawful arraignment and release on recognizance, petitioner told the investigator where the firearm had been purchased (Tr. 54-57). This testimony was competent.

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It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.

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